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International Union of Operating Engineers Local 150, AFL–CIO and R&D Thiel, a Division of Carpenter Contractors of America, Inc.

International Brotherhood of Teamsters Local 325¹ and R&D Thiel, a Division of Carpenter Contractors of America, Inc. Cases 33–CD–444 and 33–CD–445

September 30, 2005

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). R&D Thiel, a Division of Carpenter Contractors of America, Inc. (R&D Thiel), filed charges on January 11, 2005,² alleging that the Respondent Unions, Operating Engineers Local 150 (Operating Engineers) and Teamsters Local 325 (Teamsters), each violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing R&D Thiel to assign certain work to employees it represents rather than to employees represented by the other union. The hearing was held on February 8 before Hearing Officer Nicholas M. Ohanesian. Thereafter, R&D Thiel filed a brief in support of its position, and Operating Engineers filed a posthearing brief and motion to quash the notice of hearing.³

The Board affirms the hearing officer’s rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

R&D Thiel, a Division of Carpenter Contractors of America, Inc., an Illinois corporation with an office and principal place of business located at 2340 Newburg Road, Belvidere, Illinois, and various jobsites located in and around the State of Illinois, is engaged in the business of construction carpentry and the manufacture of wall, floor, and ceiling components. During the calendar year 2004, a representative period, R&D Thiel purchased and received goods and materials valued in excess of \$50,000, which were shipped directly to its Belvidere, Illinois facility from suppliers located outside the State of

Illinois. We accordingly find that R&D Thiel is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based on the stipulation of the parties, that Operating Engineers and Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

R&D Thiel manufactures and installs wooden building components, including roof trusses, floor sections, and walls, on residential jobsites in the Chicago metro area. Crane truck drivers employed by R&D Thiel transport these products to its jobsites using flatbed trucks and trailers equipped with a crane. The drivers use the cranes to place the components on the ground, directly on buildings, scaffolding, or into place as required by R&D Thiel’s customers. Since commencing operations in the late 1970s, R&D Thiel has been a signatory to a series of collective-bargaining agreements with Teamsters covering the drivers. The most recent agreement is effective from July 1, 2003, through June 30, 2006.

In late October or early November 2004, Operating Engineers business agent Charles August tried to persuade R&D Thiel’s president, Donald Reiter, to sign a memorandum of agreement stating that R&D Thiel would use Operating Engineers-represented employees to operate cranes when hoisting materials onto buildings. Reiter did not sign the agreement. Then, during the first week of November 2004, Operating Engineers vice president and organizing director, James Sweeney, told two of R&D Thiel’s crane truck drivers at the Madison Park jobsite in Aurora, Illinois, to fold up their cranes and leave the jobsite. Sweeney also told R&D Thiel’s superintendent, Donald Bass, that if Bass did not get the crane trucks off of the jobsite, Sweeney would have pickets up by the end of the day. Also in November 2004, Operating Engineers business agent “Martin” told Teamsters steward, Stephen Fletcher, that Operating Engineers had “a problem with everything [Teamsters] do, except for setting the material, on the ground.”⁴ Martin also said that “he would like [Teamsters] to stop doing [Operating Engineers’] work.” Although the exact dates and details are not discernible from the record, Reiter testified that Operating Engineers also stopped R&D Thiel’s crane truck drivers from unloading materials at R&D Thiel’s Madison Park jobsite, as well as at a second location.

¹ We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective June 25, 2005.

² Unless stated otherwise, all dates are in 2005.

³ Teamsters did not file a posthearing brief.

⁴ Fletcher testified that the business agent’s last name was Martin, but that he did not know “Martin’s” first name.

In response to Operating Engineers' threats and demands, Teamsters sent R&D Thiel a letter dated December 20, 2004, stating that Teamsters would picket if R&D Thiel reassigned to Operating Engineers any of the work performed by Teamsters.

A May 12, 2000 "Construction Site Jurisdictional Agreement" between the International Brotherhood of Teamsters and International Union of Operating Engineers provides that the operation of cranes and crane trucks is the jurisdiction of the Teamsters, except for the hoisting or lowering of materials or equipment onto scaffolds or into place.⁵ That work was recognized as the jurisdiction of the Operating Engineers. On February 8, Teamsters Joint Council 25⁶ and Operating Engineers Local 150 entered into an addendum to the construction site jurisdictional agreement adopting it with the proviso that the hoisting of materials or equipment onto building structures also was within the jurisdiction of Operating Engineers.⁷ R&D Thiel was not a signatory to the construction site jurisdictional agreement or the local addendum.

Throughout the hearing, Teamsters continued to claim generally the operation of crane trucks at R&D Thiel's jobsites. In fact, the hearing officer asked whether Teamsters disclaimed the operation of crane trucks at R&D Thiel's jobsites, and Teamsters' counsel answered "no," the work had not been disclaimed. Shortly after making this statement, however, Teamsters adopted the local addendum as setting forth its position. Teamsters business representative, Tom Streck, then testified that Teamsters-represented employees would no longer hoist materials onto building structures at R&D Thiel jobsites.

⁵ That agreement provided, in pertinent part:

The driving of material delivery trucks with hoisting equipment attached is recognized as the jurisdiction of the Teamsters. Drivers of this type of truck shall be permitted to unload materials at any place on the job site as directed by the contractor's supervisors except that he shall not be permitted to (1) hoist materials or equipment onto scaffolds, (2) hoist materials or equipment into place, or (3) lower materials and equipment into place. This work is recognized as the jurisdiction of the Operating Engineers.

⁶ Teamsters Joint Council 25 is the governing body representing Teamsters local unions in the Chicago area. See *Dominick's Finer Foods*, 308 NLRB 935, 937 (1992), enfd. 28 F.3d 678 (7th Cir. 1994).

⁷ The local addendum provided, in pertinent part:

The driving of material delivery trucks with hoisting equipment attached is recognized as the jurisdiction of the Teamsters. Drivers of this type of truck shall be permitted to unload materials at any place on the job site as directed by the contractor's supervisors except that he shall not be permitted to (1) hoist materials or equipment onto scaffolds or onto the building structure, (2) hoist materials or equipment into place, or (3) lower materials and equipment into place. This work is recognized as the jurisdiction of the Operating Engineers. (Emphasis in original.)

R&D Thiel, nevertheless, continued assigning the operation of crane trucks to Teamsters, and Teamsters-represented employees continued doing the work through the conclusion of the hearing.

B. Work in Dispute

The Board's notice of hearing in this proceeding stated that the dispute concerns the following assignment: "The operation of cranes on crane trucks at the Employer's job sites." At the hearing, however, counsel for Operating Engineers stated that it was seeking the "operation of cranes, on crane trucks, to hoist materials or equipment, onto the building structure . . . not . . . any other work, including the driving of those trucks or the unloading of those trucks." Similarly, R&D Thiel takes the position that the work claimed by the Operating Engineers "is limited to the hoisting of materials onto the building itself."

The positions of the parties establish that the only work in dispute in this proceeding is the operation of crane trucks to hoist or lower materials or equipment onto scaffolds, building structures, or into place. Accordingly, we find that the description of the work in dispute set forth in the notice of hearing is too broad, and we narrow it to encompass only the operation of cranes on crane trucks at R&D Thiel's jobsites to hoist or lower materials or equipment onto scaffolds, building structures, or into place. See *Machinists (Hudson General Corp.)*, 326 NLRB 62, 64 (1998).

C. Contentions of the Parties

R&D Thiel argues that there is reasonable cause to believe that Operating Engineers violated Section 8(b)(4)(D) of the Act because it stopped crane drivers from unloading materials at R&D Thiel jobsites. R&D Thiel also maintains that there is reasonable cause to believe that both Unions violated the Act when they threatened to picket. R&D Thiel further argues that no voluntary adjustment mechanism exists and that Teamsters has not made a valid disclaimer of the work in dispute. As to the merits of the dispute, R&D Thiel contends that the work in dispute should be assigned to employees represented by Teamsters, based on the collective-bargaining agreements between it and Teamsters, employer preference and past practice, industry practice, relative skills, prior cases, and economy and efficiency of operations. R&D Thiel also argues that the Board should issue a broad award, because it is likely that the dispute will recur.

Operating Engineers moves to quash the notice of hearing, contending that there is no reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and that there is a voluntary method of resolving

this dispute. Operating Engineers also argues that during the hearing in this case and in a letter written after the close of the hearing in this case Teamsters effectively disclaimed any interest in the disputed work. Operating Engineers further argues that the threat made by Teamsters to picket if the work was reassigned was a sham intended only as a maneuver to bring this dispute to a Section 10(k) hearing before the Board and that Teamsters never intended to picket. In the alternative, should the Board find that a jurisdictional dispute exists, Operating Engineers argues that the disputed work should be awarded to employees it represents, based upon training and industry practice. Finally, Operating Engineers contends that R&D Thiel is not entitled to a broad award.

D. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work among rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute. See *Electrical Workers, Local 3 (Slattery Skanska, Inc.)*, 342 NLRB No. 21, slip op. at 2 (2004). Additionally, the Board will not proceed under Section 10(k) if there is an agreed-upon method for voluntary adjustment of the dispute. *Id.*

1. Operating Engineers' motion to quash

As discussed above, Operating Engineers contends that the Board should quash the notice of the 10(k) hearing because Teamsters disclaimed the work in dispute. According to Operating Engineers a jurisdictional dispute does not exist. We reject this contention for the following reasons.

Teamsters repeatedly claimed the disputed work. For example, in its December 20, 2004 letter to R&D Thiel, Teamsters stated,

Teamsters Local Union 325 has been assigned to deliver and operate the crane. We have done this for several years.

We understand that Operating Engineers Local 150 has demanded this work. If this work is taken from Teamsters Local 325, Teamsters Local 325 will take action including picketing.

Teamsters further claimed this work at the hearing, and R&D Thiel continued to assign Teamsters-represented employees to perform the work in dispute through the conclusion of the hearing.

We reject Operating Engineers' assertion that Teamsters has effectively disclaimed the work. To be effective, a disclaimer must be a clear, unequivocal, and unqualified disclaimer of all interest in the work in question. *Laborers Local 79 (DNA Contracting)*, 338 NLRB 997, 998–999 (2003); *Operating Engineers Local 150 (Interior Development)*, 308 NLRB 1005, 1006 (1992). Conduct inconsistent with a disclaimer militates against its effectiveness. Thus, an otherwise clear and unequivocal disclaimer may be rendered ineffective by subsequent union conduct manifesting a continuing jurisdictional claim. *DNA Contracting*, supra.

The local addendum to the construction site jurisdictional agreement recognizes the work in dispute as within the jurisdiction of the Operating Engineers. However, at the hearing in this case on the same day that the parties executed the agreement, Teamsters' counsel stated that Teamsters did not disclaim the operation of crane trucks at R&D Thiel's jobsites. In addition, the Teamsters continued to perform the work through the conclusion of the hearing. For these reasons, we find Teamsters' alleged disclaimer ineffective. *DNA Contracting*, supra; *Laborers Local 81 (Kenny Construction Co.)*, 338 NLRB 977, 978 (2003).⁸

2. Competing claims to work in dispute

As discussed above, in a December 20, 2004 letter to R&D Thiel, Teamsters claimed the work in dispute. Additionally, Operating Engineers business agent Martin told R&D Thiel employee Fletcher that Operating Engineers had "a problem with everything [Teamsters] do, except for setting the material, on the ground" and that he "would like [Teamsters] to stop doing [Operating Engineers'] work." Operating Engineers also asked R&D Thiel to sign a memorandum of agreement stating that it would use Operating Engineers-represented employees to operate cranes when hoisting materials onto buildings. Accordingly, we find that there are competing claims to the disputed work.

3. Use of proscribed means

As discussed above, Operating Engineers threatened to picket R&D Thiel's jobsites if the disputed work was not reassigned to employees it represented and told R&D

⁸ Operating Engineers argues that a March 4 letter from Teamsters to Joint Council 25 further demonstrates that Teamsters has disclaimed the work in dispute. Although the letter was sent after the record in this proceeding had closed, Operating Engineers did not file a motion to reopen the record, but instead attached a copy of the letter to its posthearing brief. We therefore do not consider the March 4 letter. See Sec.102.48(d)(1) of the Board's Rules and Regulations. Because we decline to consider Teamsters' letter, we find it unnecessary to pass on R&D Thiel's motion to strike the letter or reopen the record, or on the Operating Engineers' opposition to that motion.

Thiel's crane truck drivers to fold up their cranes and leave the jobsite. The fact that Operating Engineers denied making these threats is inconsequential to the reasonable cause determination.⁹

Teamsters also threatened to picket if R&D Thiel reassigned the work in dispute to Operating Engineers. Operating Engineers argues that the Teamsters' threat was a sham intended only as a maneuver to bring this dispute to a Section 10(k) hearing before the Board and that the Teamsters never intended to picket. This argument primarily relies upon the testimony of R&D Thiel's President Reiter, who stated that Teamsters wanted him "to file a 10(k)" and that he was not sure Teamsters would have followed through on its threat if the work had been reassigned. Contrary to the Operating Engineers' characterization, Reiter's testimony does not demonstrate that he admitted to collusion. In the absence of affirmative evidence that a threat to take proscribed action was a sham or was the product of collusion, the Board will find reasonable cause to believe that the statute has been violated. *Laborers Local 271 (New England Foundation Co.)*, 341 NLRB No. 70, slip op. at 2–3 (2004) (citing *Laborers Indiana District Council (E&B Paving, Inc.)*, 340 NLRB No. 150 (2003)). Therefore, we find that there is reasonable cause to believe that both Unions used proscribed means to enforce their claim to the work in dispute.

4. No voluntary method for adjustment of dispute

The record does not establish that all of the parties have agreed to a voluntary method for adjustment of this dispute. Operating Engineers urges the Board to find that the construction site jurisdictional agreement and the local addendum are an agreed-upon method for voluntary adjustment of the dispute. However, R&D Thiel is not a party to these agreements and is not bound by them. It is well settled that all parties to the dispute must be bound if an agreement is to constitute "an agreed method of voluntary adjustment." *E&B Paving*, supra slip op. at 4. Thus, we find no such agreement exists here.

In sum, we find there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. For the above reasons, we find that the dispute is properly before the Board for determination,

and we deny Operating Engineers' motion to quash the notice of the hearing.

E. Merits of the Dispute

The grant of authority in Section 10(k) for the Board to "hear and determine" jurisdictional disputes requires the Board to make an affirmative award of the disputed work to one of the groups of employees involved in the dispute. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 579 (1961). While the Act does not set out the standards the Board is to apply in making this determination, the Supreme Court has explained that "[e]xperience and common sense will supply the grounds for the performance of this job which Congress has assigned the Board." *Id.* at 583. Consistent with the Court's opinion, the Board announced in *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962), that in making the determination that the Supreme Court found was required by Section 10(k), the Board would consider "all relevant factors," and that its determination in a jurisdictional dispute would be an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. See generally *Slattery Skanska*, supra, slip op. at 3–4.

We have considered the following factors, which we find relevant in the context of the current dispute and, for the reasons set forth more fully below, we conclude that R&D Thiel's employees represented by Teamsters are entitled to perform the work in dispute. In making this determination, we emphasize that we are awarding the work to R&D Thiel's employees represented by Teamsters, not to that Union or its members.

1. Certifications and collective-bargaining agreements

There is no evidence of any Board certifications concerning the employees involved in this dispute. Accordingly, we find that the factor of Board certifications does not favor awarding the disputed work to employees represented by either Union. See *Slattery Skanska*, supra, slip op. at 4; *Iron Workers Local 1 (Goebel Forming, Inc.)*, 340 NLRB 1158, 1161 (2003).

R&D Thiel's collective-bargaining agreement with Teamsters explicitly covers crane truck drivers, and R&D Thiel employs Teamsters-represented employees to perform the disputed work.¹⁰ In contrast, R&D Thiel does not have a collective-bargaining agreement with Operating Engineers. Accordingly, the factor of collec-

⁹ Conflicting versions of events do not prevent the Board from proceeding under Sec. 10(k). The Board need not rule on the credibility of testimony in order to proceed to a determination of the dispute, because the Board need only find reasonable cause to believe that Operating Engineers and Teamsters violated the statute. *Slattery Skanska*, supra, slip op. at 3 fn. 5.

¹⁰ Art. 2, Sec. 2.2 of the collective-bargaining agreement states, "This agreement covers . . . crane truck drivers . . . and drivers or helpers operating . . . crane trucks; and engaged in the delivery, loading and unloading of lumber, lumber products, millwork, trim and building materials from yards, and warehouses, or mills. . ."

tive-bargaining agreements favors awarding the work in dispute to employees represented by Teamsters.

2. Employer preference, current assignment, and past practice

R&D Thiel, in accordance with its preference, and consistent with its practice of 20 years, has assigned the disputed work to employees represented by Teamsters. We find that R&D Thiel's preference, current assignment, and past practice favor awarding the disputed work to employees represented by Teamsters.

3. Area and industry practice

The parties presented no evidence with respect to industry practice. With respect to area practice, there is evidence that both Unions have performed the disputed work in the past in the relevant geographic area. Although the Teamsters perform this work at more area employers than the Operating Engineers, we do not find that the factor of area practice favors awarding the disputed work to either employee group.

4. Prior cases

R&D Thiel relies on *Operating Engineers Local 150 (Components, Inc.)*, 197 NLRB 569 (1972), in support of its contention that precedent dictates that the hoisting or lowering of materials onto buildings, scaffolding, and into place must be awarded to Teamsters. In *Components, Inc.*, the work in dispute was the operation of cranes in moving component parts from trucks onto buildings. The Board awarded the work to employees represented by Teamsters instead of employees represented by Operating Engineers. The Board has awarded the operation of crane trucks to Teamsters-represented employees in other cases involving various Operating Engineers locals as well. See *Teamsters Local 420 (Stief Co.)*, 313 NLRB 814 (1994); *Operating Engineers Local 12 (Stief Co West)*, 306 NLRB 580 (1992); *Operating Engineers Local 965 (Twin-State Gang Nail Structures)*, 249 NLRB 894 (1980); *Operating Engineers Local 12 (Associated Concrete Products)*, 224 NLRB 1609 (1976). While these cases are not accorded controlling weight in our determination of the dispute in the instant case, they are factors that we have considered since the factual situations in this case are similar. Consequently, precedent favors an award of the disputed work to employees represented by Teamsters. See *Laborers Local 910 (Brockway Glass)*, 226 NLRB 142, 144-145 (1976).¹¹

¹¹ Member Liebman finds it unnecessary to rely on prior cases in determining this dispute.

5. Relative skills and experience

Since 1976, R&D Thiel has employed Teamsters-represented employees and provides them with 6 weeks of on the job training. During this training, a new employee works with one of R&D Thiel's operators. Gradually, as the new employee gains skills, the employee works with less and less supervision. Employees represented by Operating Engineers receive training at the Union's training school and not on the job. This training includes classroom work, as well as testing. In *Laborers (Henkels & McKoy, Inc.)*, 336 NLRB 1044, 1045 (2001), the Board found that the factor of relative skills and training favored employees who had satisfied greater training requirements as part of a formal union training program. Because employees represented by either Union in this case have the necessary skills and training to perform the work in dispute, however, we find that the factor of relative skills and experience does not favor awarding the disputed work to employees represented by either Union. *Laborers Local 113 (Joseph Lorenz, Inc.)*, 303 NLRB 379, 380 (1991).

6. Economy and efficiency of operations

R&D Thiel does not employ employees represented by Operating Engineers. Further, R&D Thiel asserts that it is more economical and efficient for it to continue to use employees represented by Teamsters rather than employees represented by Operating Engineers. If the Employer used Operating Engineers-represented employees to hoist or lower materials onto buildings, scaffolding, or into place, Teamsters-represented employees would drive the crane to the jobsite. Then Operating Engineers-represented employees would hoist the materials onto the buildings, scaffolding, or into place. The employees represented by Teamsters would then return to drive the crane away. In other words, one group of employees would sit idle while the other group of employees worked. Consequently, R&D Thiel would face additional costs if it hired employees represented by Operating Engineers to perform the work in dispute while also retaining employees represented by Teamsters. Accordingly, this factor supports awarding the disputed work to employees represented by the Teamsters.

CONCLUSIONS

After considering all the relevant factors, we conclude that employees represented by Teamsters are entitled to continue performing the work in dispute at the jobsites that gave rise to this dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, employer past practice, prior cases, and economy and efficiency of operations. In making this determination, we award the work to em-

employees represented by Teamsters, not to that labor organization or its members.

Scope of Award

R&D Thiel seeks a broad, areawide award that encompasses “all future jobs,” and claims that the dispute is likely to recur. The Board, however, customarily declines to grant an areawide award in cases in which the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See, e.g. *Bricklayers (Cretex Construction Services)*, 343 NLRB No. 110, slip op. at 4 (2004); *Plumbers Local 562 (Charles E. Jarrell Contracting)*, 329 NLRB 529, 534 (1999). Accordingly, we shall limit the present determination to the work jurisdiction dispute that gave rise to these proceedings.

Determination of Dispute

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of R&D Thiel represented by International Brotherhood of Teamsters Local 325 are entitled to operate cranes or crane trucks, at R&D Thiel’s jobsites that gave rise to this proceeding, to hoist or lower mate-

rials or equipment onto scaffolds, building structures, or into place.

2. International Union of Operating Engineers Local 150, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force R&D Thiel to assign the disputed work to employees represented by it.

3. Within 14 days from this date, International Union of Operating Engineers Local 150, AFL–CIO shall notify the Regional Director for Region 33 in writing whether it will refrain from forcing R&D Thiel by means proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. September 30, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD